

REMARKS

Applicants respectfully thank Examiner for the thorough review of this application. In the Official Action, the Examiner has rejected Claims 1-16 under 35 U.S.C. § 103(a) as being unpatentable primarily over Brattain et al. '011 (U.S. Patent Application No. 2002/0073011) in view of Lukose '812 (U.S. Patent Application No. 2002/0165812). Applicants respectfully disagree for numerous reasons.

I. Status Of "Final" Official Action Is Improper Here

As an initial matter, Applicants respectfully disagree with the properness of the "final" status of the present Official Action as not setting forth a proper prima facie case of obviousness as required, especially where the Examiner has provided no support or evidence of motivation to combine the cited art as required (this burden is on the Examiner). Absent such support or evidence specifically being set forth in the Official Action, a proper prima facie case of obviousness has not been properly set forth, and the final status of the Official Action is required to be removed. Not only is there nothing explicit in the cited patents that would suggest the modification, there is also nothing implicit suggesting modifying the cited patents, as the teachings, knowledge of one of ordinary skill in the art, and nature of the problem to be solved, as a whole, would not suggest doing so to those of ordinary skill in the art as is required in MPEP 2143.01 and *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). Applicants respectfully submit that merely saying that elements of a claimed invention can be found in two or more patent documents neither provides the required support nor evidence of motivation to combine the two or more patent documents. Accordingly, for at least this reason, Applicants respectfully submit that the "final" status should be removed and that Claims 1-16 are patentable and define over the cited art.

II. Neither Brattain et al. '011 Nor Lukose '812 Even Recognize Problems Addressed By Claimed Invention

In addition to the above, neither Brattain et al. '011 nor Lukose '812 even recognize the problems which Applicants' claimed invention is directed to solving. The Supreme Court in the famous Eibel Process case has long acknowledged that recognition of the problem not previously recognized by others is part of the invention and leads to nonobviousness. Accordingly, Applicants have recognized that previous methods of disseminating stock quotes in real time

information were lacking in being able to provide timely information regarding, for example, current conditions of commodities and financial markets whereby such information can be, for example, delivered to investors in real time. For example, as set forth in the "Background" Section of the present application, Applicants recognized that, in stock trading systems, when new customers are added to systems of the stock trading prior art, new quote servers need to be added to ensure that the system does not spend too much time delivering stock quotes and not enough time receiving stock quotes. Applicants also recognized that if numerous customers are requesting a stock quote at the same time, then the quote server in prior art systems will take some time to send the requested stock quotes to all the requesting customers. If the quote server spends more time delivering stock quotes, then the quote server must spend less time getting stock quotes. As a result, if the response time to the customer takes too long, then the quote server may miss some of the stock quotes sent by a field vender. In turn, investors may not have the most current stock quote information needed to make intelligent trading decisions, which can be critical in real time systems. Applicants, however, have now provided an elegant solution to these problems. Such problem recognition and elegant solution are not found in the cited art, alone or in combination.

In contrast, the purposes of Brattain et al. '011, for example, are to provide: (1) "a centralized repository for client information such that all team members of an executive [sales and marketing] group may quickly and conveniently access the information, if they are authorized to do so" (page 1, para. 13); (2) a "centralized information repository to be able to integrate and store a plurality of forms of data, such as word processor documents, presentation documents, web based documents, electronic mail, and database records" (page 1, para. 14) for the executive sales and marketing group; and (3) a "system to allow for extraction or export of partial databases to be downloaded to portable computers, and to allow for the re-integration of new information in these partial databases into the centralized database, otherwise known as 'synchronization' of databases" (page 2, para. 15) for the executive sales and marketing group. None of these purposes have anything to do with the problems addressed by the claimed invention and are completely different than the claimed invention.

Clearly, from the above, Brattain et al. '011 fails to even recognize problems with dissemination of stock quotes in real time addressed by the present claimed invention and fails to

provide any solution for a problem not otherwise recognized. For example, one skilled in the art faced with a problem associated with real time dissemination of stock quotes would not even begin to look at a system for providing centralized information of word processing and other marketing records for sales and marketing teams to somehow associate it with the problem. The fact that Brattain et al. '011 even mentions receiving stock prices of a company as an aside, when properly taken in the context of what the patent document teaches as a whole, has only to do with providing company information for sales and marketing teams and nothing to do with problems associated with dissemination of stock quote information in real time. Applicants respectfully submit that to say otherwise is a misnomer.

Likewise, Lukose '812 provides a system and methods of selling contingent information goods that: (1) allow "many more contingent information goods" to "be sold" (page 1, para. 5); (2) allow the consumer to "enter into a 'contingent contract' with the seller such that the seller is only paid as a function of the outcome of the condition on which the contingency is made in the information goods" (page 1, para. 9); and (3) "makes it more likely that more contingent information goods will be transacted between sellers and buyers by tying at least a portion of the payment made to a seller to the satisfaction of a condition" (page 1, para. 10). None of these purposes have anything to do with the present claimed invention. Clearly, Lukose '812 also fails to recognize problems with dissemination of stock quotes in real time addressed by the present claimed invention, fails to provide any such solutions to these problems, and problems with entering contingent contracts, even for stock options, having nothing to do with problems associated with dissemination of stock quotes in real time.

As such, Applicants respectfully submit that to somehow use two different published patent applications, which each fails to recognize the problems which Applicants both recognize and address and which each have completely different purposes from each other and from the present claimed invention, is surprising and awkward and would not be what one skilled in the art would look to do to somehow arrive at the present claimed invention. Perhaps it is bit like mixing apples and oranges in hopes of obtaining grapes. The three have nothing to do with each other. The problems addressed and purposes of Brattain et al. '011 and Lukose '812 are completely different, the systems and methods of the published patent documents are completely different, and the software/hardware technology concepts used to accomplish the purposes

therein are completely different. So, Applicants respectfully submit that to somehow attempt to combine selected piecemeal portions of these two patent documents that fail to recognize the problems addressed by Applicants claimed invention or has related purposes to then somehow arrive at the claimed invention is improper. For this reason as well, Claims 1-16 define over the cited art.

III. No Proper Prima Facie Case of Obviousness Has Been Set Forth As Required

Nevertheless, to address each of Examiner's concerns more explicitly, in the Official Action (paragraphs 1-2), the Examiner has rejected Claims 1, 3-4, 6-8, 10-11, 13, and 15 under 35 U.S.C. § 103(a) as being unpatentable over Brattain et al. '011 (U.S. Patent Application No. 2002/0073011) in view of Lukose '812 (U.S. Patent Application No. 2002/0165812). To establish a proper prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on the Applicants' disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); *see also* MPEP 706.02(J).

A. No suggestion or motivation to modify the references or combine reference teachings.

Applicants respectfully submit that the Examiner has failed to meet the first element of a prima facie case for obviousness. First, there is no suggestion or motivation, either in the cited patents themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. The Examiner has the burden of proffering a showing of this motivation to combine and has not met it here. No support or evidence at all has been set forth by the Examiner. Instead, the Examiner, in a conclusive fashion, has merely stated:

It would have been obvious to one with ordinary skill in the art to include determining if the information is being requested by a user and then sending the requested information to a contact server which distributes the information to Brattain et al because Lukose teaches information distribution efficiency (para 0003, 0004).

Applicants respectfully submit that this statement not only summarizes the extent of the Examiner's support set forth in the Official Action, but this statement is the Examiner's only support, provides no real support, and clearly lacks any evidentiary basis. The Examiner, however, is required to specifically set forth the support and evidence of making such a combination of art. Applicants respectfully submit that absent such support and evidence, an obviousness rejection fails. As such, as set forth above, for at least this reason, the "final" status is improper, the rejection should be removed, and Claims 1, 3-4, 6-8, 10-11, 13, and 15 define over the cited art.

Additionally, for example, even if Applicants attempted to infer or read into the Official Action what the Examiner might have wanted to set forth for support but did not, Applicants might look to the cited art itself. Applicants, however, also respectfully submit that the cited art itself falls short in providing any motivation or suggestion to combine. As set forth by Applicant above, Brattain et al. '011 and Lukose '812 fail to recognize the problems which Applicants claimed invention addresses, have completely different purposes, and are directed to completely different systems. This alone is enough to show no motivation or suggestion of combining these patent documents.

Further, Brattain et al. '011, more specifically, describes a client account and information management system which integrates a plurality of different information types, such as database records, word processing files, e-mails, web pages, and websites, as a database application on a web-enabled database server for executive sales and marketing teams. Sales and marketing teams may access the system, such as with a laptop computer, through an intranet or remotely through an Internet. The system provides links to websites, such as stock pricing websites and client's home pages to allow a sales team member to use the system to quickly gather information regarding a company's latest new announcements, stock performance, and financial status. Clearly, this has nothing to do with the claimed invention. The Examiner takes the position that Brattain et al. '011 describes receiving information as stock quotes from a provider of the information by a quote server and a database associated with the quote server. Applicants, however, respectfully submit that this clearly shows the piecemeal nature of attempting to use a system for executive sales and marketing teams which allows the teams to gather information about a company's latest news (which by the way happens to include the company's stock

performance), which has nothing to do with improving or enhancing prior art systems and methods of disseminating stock quotes in real time such as for financial markets, as a cornerstone reference to reconstruct Applicants' claimed invention.

For example, the Examiner uses Brattain et al. '011 to find only one step or element in independent Claims 1, 4, and 13, but leaves out or fails to disclose or suggest all of the other steps or elements of the claimed invention, e.g., "in response to a stock quote request from a user by a contact server, said contact server requesting said stock quote request from said stock quote server; sending a respective stock quote according to said stock quote request to said contact server by said quote server; and disseminating said stock quote to said user by said contact server." This shows that what Brattain et al. '011 is being used for it to improperly select one piece of a complete sales and marketing system for client contact information and then later use with other pieces of other unrelated systems to reconstruct Applicant's claimed invention (using improper hindsight).

The Examiner, however, then goes on to admit that Brattain et al. '011 fails to teach or suggest determining if the information is being requested by a user and then sending the requested information to a contact server which distributes the information. Applicants, in turn, point out that this is a huge discrepancy in Brattain et al. '011 itself, this also indicates the failure of Brattain et al. '011 to recognize the problems addressed by the claimed invention, and this also indicates the failure of Brattain et al. '011 to provide any motivation to make a combination with Lukose '812. Applicants respectfully submit that absent Applicants' disclosure, one skilled in the art would have no motivation to even look for these discrepancies of Brattain et al. '011 in Lukose '812. Not only is there no motivation to combine, as both Brattain et al. '011 and Lukose '812 are lacking, but again improper hindsight is being used to somehow attempt to reconstruct Applicants' claimed invention by piecemealing selected portions of other art to somehow arrive at Applicants claimed invention using Applicants claimed invention as a roadmap (while ignoring what Brattain et al. '011 and Lukose '812 teach as a whole). This clearly is improper and does not meet the Examiner's burden of support and evidence.

So, despite lacking any motivation, the Examiner attempts to take selected portions of Lukose '812 to somehow improperly reconstruct Applicants' claimed invention. This is further

illustrated by showing that Lukose '812 describes a method for selling contingent information by receiving an offer for information with at least one contingency, providing the information in response to the offer, and then receiving a contingent payment if at least one condition for the contingency is satisfied after the information has been provided. An example described in Lukose '812 is related to buying and selling stock options, e.g., predicted future price as being a contingency. Nevertheless, Lukose '812 likewise has nothing to do with improved or enhanced systems and methods of disseminating stock quotes in real time as it only relates to providing contingent contracts for stock options. As such, one skilled in the art would have no motivation to look at this patent document teachings about contingent contracts and somehow arbitrarily decide to combine a piecemeal portion of it with teachings of a totally unrelated patent document related to executive sales and marketing systems for client contact information as set forth in Brattain et al. '011. Not only is there nothing explicit in the cited patent documents that would suggest the modification, there is also nothing implicit suggesting modifying the cited patents, as the teachings, knowledge of one of ordinary skill in the art, and nature of the problem to be solved, as a whole, would not suggest doing so to those of ordinary skill in the art as is required in MPEP 2143.01 and *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000).

Still further, even if the cited patent documents somehow could be combined or modified, this still is not sufficient to establish a *prima facie* obviousness unless the prior art also suggests the desirability of the combination. MPEP 2143.01. Not only is there no suggestion as to the desirability of the combination, discussed above, but also the combination would not in fact be desirable as the absurd result, when properly taken for the patent documents teach as a whole, would be an executive sales and marketing system that provides client contact information databases on a company and initiates contingent contracts with the company. Clearly, this has nothing to do with the claimed invention and fails to provide an improved or enhanced method and system of disseminating stock quotes in real time.

Finally, even assuming a motivation and an ability to combine the patents, the MPEP 2143.01 states: "the fact that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish *prima facie* obviousness." Instead, the Examiner is required to provide evidence of such motivation and the desirability of making such

a combination. And yet, nothing else has been shown by or set forth by the Examiner. Therefore, for at least this reason, Applicants respectfully submit that a proper prima facie case of obviousness has not been set forth, that the present claimed invention is not obvious, and that the present claimed invention defines over the cited art.

B. No reasonable expectation of success.

The Examiner has also failed to meet the second element of a prima facie case for obviousness because there must be, and there is not in this present case, a reasonable expectation of success. Clearly, from the discussion above and a quick examination of the patent documents, one would realize that the modification of the prior art patent fails to produce the Applicants' present claimed invention, namely an improved or enhanced method of disseminating stock quotes in real time. Instead, the combination, as suggested above, results in an absurd system to help executive sales and marketing teams maintain client contact information databases that also provide contingency contracts - again not the claimed invention. Therefore, the second element of a prima facie case of obviousness has not been satisfied, and for this reason as well, the claimed invention is not obvious and defines over the cited art.

C. The cited patent does not teach or suggest all the claim limitations.

Finally, the Applicants respectfully submit that the Examiner has failed to meet the third element of a prima facie case for obviousness, which requires all claimed features be taught or suggested. In this case, as set forth above, the Examiner takes the position that Brattain et al. '011 only shows one element or step of the present claimed invention for independent Claims 1, 4, and 13, namely "[i]nformation as stock quotes are received from a provider of the information by a quote server (para 0046)." The Examiner then asserts that Lukose '812 "discloses determining if the information is being requested by a user and then sending the requested information to a contact server which distributes the information (para 0026, 0048, 0049)." What the Examiner leaves out, however, is the fact that "the information" in Lukose '812 is not "stock quote information from a provider by a quote server" as included in the present claims. As such, Applicants respectfully submit that attempting to insert "the information" from Brattain et al. '011 into Lukose '812 clearly misses the point that the request from a user is "by a contact server" as presently claimed. Nothing in Lukose '812 or Brattain et al. 011 teaches or suggests this element and the Examiner has failed to account for this missing element or step. In other

words, because the contact server is not requesting "the information" responsive to a user, this element or step is missing from the Examiner's statements. Accordingly, absent this feature, the Examiner's proposed or alleged combination fails. Even further, the concept of having a contact server request information from a quote server responsive to a user request is one of the elegant ways that the present claimed invention is clearly different from the cited art to help address the problems with prior art systems. The Applicants respectfully submit that the Examiner has not established a *prima facie* case of obviousness because, as a minimum, he has not shown that Brattain et al. '011 and Lukose '812 teach or suggest all the claim features, nor has he shown some suggestion or motivation, either in the references or in the knowledge generally available to one of ordinary skill in the art, to modify Brattain et al. '011, as required in MPEP 2143. Accordingly, Claims 1, 3-4, 6-8, 10-11, 13, and 15 have been shown to be nonobvious and define over the cited art.

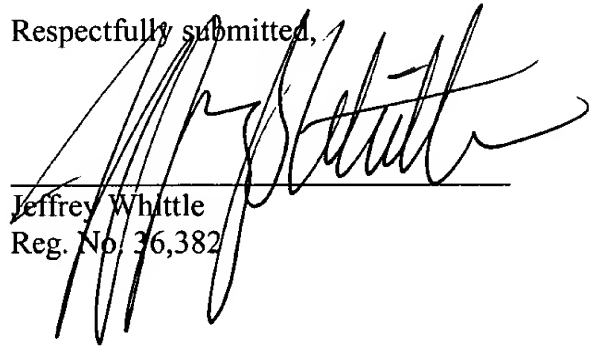
IV. Dependent claims Define Over Cited Art

Also, in the Official Action (paragraphs 3-4), the Examiner rejected dependent Claims 2, 5, and 14 under 35 U.S.C. § 103(a) as being unpatenable over Brattain et al. '011 in view of Lukose '812 and further in view of Phillips et al. '224 (U.S. Patent No. 6,182,224) and rejected dependent Claims 9, 12, and 16 under 35 U.S.C. § 103(a) as being unpatenable over Brattain et al. '011 in view of Lukose '812 and further in view of Meyer et al. '770 (U.S. Published Application No. 2002/0107770). Accordingly, Applicants reiterate the arguments set forth above and respectfully submit that because the independent claims define over the cited art, these dependent Claims 2, 5, 9, 12, 14, and 16 are not obvious and define over the cited art as well.

CONCLUSION

In view of the remarks set forth herein, Applicants respectfully submit that the application is in condition for allowance. Accordingly, the issuance of a Notice of Allowance in due course is respectfully requested.

Respectfully submitted,



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